

367.93117 Persons with authority to make funeral, burial, or other ceremonial arrangements after an individual's death -- Authority for funeral home or District Court to act -- Disqualification of person arrested for or charged with the death -- Petition to waive disqualification.

(1) Except as provided in subsection (2) of this section, the right to control the disposition of a decedent's body, make arrangements for funeral services, make arrangements for burial or cremation, and to make other ceremonial arrangements after an individual's death devolves on the following in the priority listed:

- (a) A person:
 - 1. Named as the designee or alternate designee in a declaration executed by the decedent under KRS 367.93101 to 367.93121; or
 - 2. Named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense if the decedent died while serving in any branch of the United States Armed Forces, pursuant to KRS 36.440;
- (b) The decedent's surviving spouse;
- (c) A surviving adult child of the decedent or, if more than one (1) adult child is surviving, the majority of the adult children. Less than half of the surviving adult children have the right to control disposition under this section if the child or children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children and this has been attested to in writing;
- (d) The surviving parent or parents of the decedent. If one (1) of the parents is absent, the parent who is present has the right to control disposition under this section if the parent who is present has used reasonable efforts to notify the absent parent and attests to that in writing;
- (e) The surviving adult grandchild of the decedent or, if more than one (1) adult grandchild is surviving, the majority of the adult grandchildren. Less than half of the surviving adult grandchildren have the right to control disposition under this section if the grandchild or grandchildren have used reasonable efforts to notify the other surviving adult grandchildren of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult grandchildren and this has been attested to in writing;
- (f) The decedent's surviving adult sibling or, if more than one (1) adult sibling is surviving, the majority of the adult siblings. Less than half of the surviving adult siblings have the right to control disposition under this section if the sibling or siblings have used reasonable efforts to notify the other surviving adult siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult siblings and this has been attested to in writing;
- (g) An individual in the next degree of kinship under KRS 391.010 to inherit the

estate of the decedent or, if more than one (1) individual of the same degree is surviving, the majority of those who are of the same degree of kinship. Less than half of the individuals who are of the same degree of kinship have the right to control disposition under this section if they used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who are of the same degree of kinship and this has been attested to in writing;

- (h) If none of the persons described in paragraphs (a) to (g) of this subsection are available, the following may act and arrange for the final disposition of the decedent's remains:
 - 1. Any other person willing to act and arrange for the final disposition of the decedent's remains who attests in writing that a good-faith effort has been made to contact any living individuals described in paragraphs (a) to (g) of this subsection; or
 - 2. A funeral home that has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains if the funeral director attests in writing that a good-faith effort has been made to contact any living individuals described in paragraphs (a) to (g) of this subsection;
 - (i) A court-appointed guardian or conservator for the decedent at the time of death, after all the alternatives in paragraphs (a) to (h) of this subsection have been exhausted. Cremation shall be permitted under this subsection only if:
 - 1. The decedent has not expressed an objection to cremation to the guardian or conservator prior to death; and
 - 2.
 - a. The decedent arranged a preneed policy in effect that is limited to the cost of cremation; or
 - b. The decedent lacked sufficient funds at the time of death to pay for a full burial; or
 - (j) The District Court in the county of the decedent's residence or the county in which the funeral home or the crematory is located.
- (2) No person shall have the right to control the disposition of the remains of the decedent if the person has been arrested for, or charged with, committing an offense intentionally, knowingly, or wantonly, which resulted in the death of the decedent.
 - (3) A person disqualified pursuant to subsection (2) of this section may petition the court, in the interest of justice, to waive the disqualification.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 52, sec. 1, effective July 15, 2020; and ch. 123, sec. 1, effective July 15, 2020. -- Amended 2017 Ky. Acts ch. 144, sec. 3, effective June 29, 2017. -- Created 2016 Ky. Acts ch. 59, sec. 9, effective July 15, 2016.

Legislative Research Commission Note (7/15/2020). This statute was amended by 2020 Ky. Acts chs. 52 and 123, which do not appear to be in conflict and have been codified together.